THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 26398 OF 1998

Dated 13-07-2006

Between
A.D.Venkateswarulu.

….. Petitioner

AND

Union of India, rep., by the Secretary, Ministry of Railways, New Delhi.

….Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 26398 OF 1998

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Central Administrative Tribunal in O.A.No.505 of 1997, dated 05-08-1998, whereby the action of respondents, in stopping payment of pension, was held to be justified by the Tribunal, the petitioner herein, the applicant in the O.A., has invoked the jurisdiction of this Court.

Facts, in brief, are that the petitioner was working as the Chief Booking Clerk at Khazipet in the South Central Railway. A Criminal Case was registered against him on 18-09-1981 for offences punishable under Sections 120-B, 420, 467, 468 and 471 IPC and Sections 5(c) & (d) of the Prevention of Corruption Act, 1947. Petitioner was placed under suspension with effect from 18-09-1981. A Charge sheet was filed against him in C.C.No.18 of 1985 before the Additional District Judge-cum-Special Judge for SPE and ACB, City Civil Court, Hyderabad. Aggrieved by the action of the respondents in not paying subsistence allowance, during the suspension period, the petitioner approached the Tribunal in O.A.No.677 of 1988. The Tribunal took note of the fact that the petitioner was due to retire with effect from 13-09-1982 on attaining the age of superannuation, but was continued in service

upto 06-01-1983, and that he was retired from service with effect from
07-01-1983. The Tribunal, by order dated
07-03-1991, directed the respondents to pay provisional pension to the petitioner from 07-01-1983, and held that that order would not preclude the respondents from stopping or reducing the pension payable to the petitioner, in accordance with the rules, consequent on his conviction by the Criminal Court. Consequent to the order of the Tribunal in O.A.No.677 of 1988, respondents sanctioned provisional pension of Rs.919/- per month, vide proceedings dated 04-11-1992, to the petitioner and he was paid arrears of pension also.

Criminal Case No.18 of 1985 ended in the petitioner's conviction and he was sentenced to undergo simple imprisonment for a period of one year. Aggrieved thereby, the petitioner preferred Crl.A.No.186 of 1988, and the conviction was confirmed by this Court by order
dated 20-02-1989.

The respondents issued show cause notice dated
14-02-1994 on the petitioner calling upon him to show cause as to why his pension should not be cancelled. On receipt of the petitioner's explanation the respondents, vide proceedings dated 05-03-1997, cancelled the pension sanctioned to the petitioner. Petitioner filed O.A.No.505 of 1997, challenging the order of the respondents dated 05-03-1997, before the Tribunal. The grounds of challenge before the Tribunal were that the Joint Director of the Railway Board, who passed the impugned order dated 05-03-1997, was not the competent authority, since, under the rules, it was the President of India alone who was empowered to impose such a

punishment. Secondly, since the action was taken against the petitioner nearly 14 years after his retirement, the entire proceedings were belated and were liable to be quashed. The Tribunal held that, in fact, the order of punishment was passed by the President of India and that the Joint Director had merely communicated the order. The Tribunal also held that whenever a pensioner is convicted, the authority sanctioning the pension is empowered to cancel the pension sanctioned to him after giving him an opportunity of being heard and consequent upon his conviction, after he had retired from service, the respondents had issued a show cause notice and his explanation was sought for and it was only thereafter that his pension was stopped, the action of the respondents could not be said to be contrary to law.

Smt. Thripura Sundari, learned counsel for the petitioner, would submit that while the Tribunal had held that the order was passed by the President of India, the order of punishment passed by the President of India was not produced either before the Tribunal or even now before this Court. Learned counsel also places reliance on Rule 2308 of the Indian Railway Establishment Code, which reads as under:

> "The President further reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from the pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave misconduct or negligence during his service including service rendered on re-employment after retirement:
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> Provided that
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> (a) Such departmental proceedings if instituted while the railway servant was in service, whether before his retirement or during his re-employment, shall, after the final

retirement of the railway servant be deemed to be proceeding under the article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service.

(b) Such departmental proceedings if not instituted while the railway servant was in service, whether before his retirement or during the re-employment-

(i) shall not be instituted save with the sanction of the President :

(ii) shall not be in respect of any event which took place more than 4 years before such institution; and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the railway servant during his service.

(c) no such judicial proceedings, if not instituted while the railway servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose or an event which took place more than 4 years before such institution; and

(d) the Union Public Service Commission shall be consulted before final orders are passed.

Learned counsel would submit that since the show cause notice was issued in 1997, more than 14 years after the petitioner had retired from service, the disciplinary proceedings initiated against him is contrary to Rule 2308, and as such is liable to be set aside.

As noted above, proviso (b) to Rule 2308 bars initiation of departmental proceedings in respect of any event which took place four years prior to the retirement of an employee from service. A Perusal of the show cause notice dated 14-02-1994 would show that the petitioner was called upon to show cause as to why there should not be a cut in the pensionary benefits payable to him since conduct leading to his conviction amounted to gross misconduct. Since the show cause notice issued to the petitioner was on his

conviction in a criminal case and was not on account of any disciplinary proceedings instituted against him, reliance placed by Smt. Thripura Sundari, learned counsel for the petitioner, on proviso (b) to Rule 2308 is misplaced.

With regards the other contention relating to non-production of the records including the order passed by the President of India, suffice to note, the Tribunal in its order had recorded the fact that the order was passed by the President of India and in terms of the order of the President of India dated 13-02-1997, the Senior Divisional Accounts Officer, had advised the Manager, Andhra Bank, Khazipet, to stop pension on permanent basis. We find no reason to take a view different from the one taken by the Tribunal since it is not even the case of the petitioner herein that the findings of the Tribunal in this regard are perverse. Non-production of the original records is therefore of no consequence.

The order of the Tribunal does not call for interference. The Writ Petition is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO, J

Date:13-07-2006

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RAMESH RANGANATHAN, J

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